

MEMORANDUM

TO: Board of Environmental Protection
FROM: Melissa Morrill, Bureau of Air Quality
DATE: August 2, 2007

RE: Adoption of Chapter 139, "Transportation Conformity"

Statutory and Regulatory Reference:

A. Statutory authority

38 MRSA Section 585 provides that the Board of Environmental Protection may establish and may amend standards, herein called "emission standards", limiting and regulating in a just and equitable manner the amount and type of air contaminants which may be emitted to the ambient air within a region. Such standards shall be designed to prevent air pollution and to achieve the ambient air quality standards within the region in which it is applicable.

38 MRSA Section 585-A provides that the Board of Environmental Protection may establish and amend regulations to implement ambient air quality standards and emission standards. These regulations shall be designed to achieve and maintain ambient air quality standards and emission standards within any region and prevent air pollution.

42 U.S.C. 7506 (Section 176 (c) of the Clean Air Act) "Limitations on Certain Federal Assistance" and 40 Code of Federal Regulations (C.F.R.) 51.390 et seq. "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act".

B. Specific legal mandates requiring adoption

Transportation conformity is required under the Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of the state air quality implementation plan (SIP). Conformity requirements currently apply for the following transportation related criteria pollutants: ozone, particulate matter (PM_{2.5} and PM₁₀), carbon monoxide (CO), and nitrogen dioxide (NO₂) to areas that are designated non-attainment, and those re-designated to attainment after 1990 ("maintenance areas" with plans developed under Clean Air Act section 175A). For compliance with the SIP, transportation activities will

not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS or “standards”).

Location/Applicability:

The proposed regulation will apply statewide in areas that are designated as non-attainment and/or re-designated as attainment (maintenance) for ozone, particulate matter (PM_{2.5} and PM₁₀), carbon monoxide (CO), and nitrogen dioxide (NO₂). Under the CAA, conformity determinations are required for transportation plans, programs or projects in the designated 8 hour ozone maintenance areas encompassing towns in York, Cumberland, Sagadahoc, parts of Hancock, Waldo, Knox and Lincoln counties and including one town in Androscoggin County.

Description:

The Environmental Protection Agency’s (EPA) transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the State Implementation Plan (SIP). EPA first promulgated the transportation conformity rule on November 24, 1993, (58 FR 62188) and subsequently published a comprehensive set of amendments on August 15, 1997, (62 FR 43780) that clarified and streamlined language from the 1993 rule. EPA has made several minor amendments since 1997.

On July 1, 2004, EPA published an amendment (69 FR 4004) to the conformity rule to accomplish three objectives:

- 1). Provide conformity procedures for state and local agencies under the new ozone and PM_{2.5} air quality standards;
- 2). Incorporate existing EPA and U.S. Department of Transportation (DOT) federal guidance into the conformity rule consistent with a March 2, 1999, U.S. Court of Appeals decision; and
- 3). Streamline and improve the conformity rule.

On August 10, 2005, the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was signed into Law. SAFETEA-LU revised some aspects of the Clean Air Act’s (CAA) transportation conformity provisions. Previously, states were required to adopt nearly all of the federal regulation verbatim into the SIP with changes allowed only in the Consultation Section of the regulation. SAFETEA-LU amended conformity to require only the inclusion of criteria and procedures for consultation and enforcement and enforceability pursuant to sections 93.125(c) and 93.122(a) (4) (ii) of Title 40 Code of Federal Regulations (CFR).

The Consultation Section of the regulation establishes interagency consultation procedures for determining whether transportation activities conform to the State Implementation Plan (SIP) with the Department of Environmental Protection (DEP), the Maine Department of Transportation (MaineDOT), the Metropolitan Planning Organizations (MPO’s) throughout

Maine, Maine Turnpike Authority (MTA), EPA, the Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The federal regulation outlines the various processes that must be included in the state regulation and requires it to include a process by which conflicts between the agencies are resolved.

The other section required under SAFETEA-LU deal with enforcement and enforceability. This section ensures that project sponsors and/or operators commit in writing fulfillment of project-level design concept and scope based on mitigation measures required to ensure positive conformity determinations. . The project sponsors and or operators must comply with those commitments, and if they do not follow through on the written commitments, this section allows enforcement action to be taken.

Environmental Issues:

Reductions in mobile source emissions through the evaluation of transportation projects are an important part of achieving air quality goals. Federal, State, and local governments are working to maintain ozone and particulate levels in compliance with the National Ambient Air Quality Standard (NAAQS) through the SIP attainment and maintenance plans, and to ensure that future air quality continues to achieve these health-based standards. In addition, mobile sources are a major contributor to air toxics such as benzene and greenhouse gases such as carbon dioxide.

Departmental Recommendation:

The Department recommends the Board adopt Chapter 139 Transportation Conformity as proposed.

Estimated Time of Presentation:

5 minutes.